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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21
	)	
Federal - State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
USAC Plan of Reorganization	)	DA 98-1336

COMMENTS OF INTERMEDIA COMMUNICATIONS, INC.

Intermedia Communications, Inc. ("Intermedia") hereby submits its comments on the Commission's Public Notice, released July 15, 1998, in the above-captioned proceeding.[1] Intermedia generally supports the Report and Proposed Plan of Reorganization ("Plan") submitted by the Universal Service Administrative Company ("USAC") and believes that consolidating the three universal service corporations into one entity will promote greater efficiency as well as the interests of the contributing carriers and telecommunications consumers. It is important to remember, however, that Congress provided USAC with only limited administrative functions and that the Commission must retain authority for setting policy regarding the distribution of funds. Accordingly, Intermedia urges the Commission to reject the proposals set forth by the Rural Health Care Corporation ("RHCC"), which would add unnecessary and expensive layers to the administration of the fund. In addition, the Commission

[1] Public Notice, Common Carrier Bureau Seeks Comment on Administration of Federal Universal Service Support Mechanisms, CC Docket Nos. 97-21, 96-45, DA 98-1336 (rel. July 15, 1998).

should adopt procedures to ensure that its enforcement against delinquent carriers is swift and effective and that other carriers are not harmed by USAC mistakes.

I. THE USAC ADMINISTRATIVE STRUCTURE MUST REFLECT USAC'S LIMITED AUTHORITY TO ESTABLISH POLICY

Pursuant to Section 2005(b)(2) of the Senate bill regarding supplemental appropriations,[2] the Commission directed USAC, RHCC, and the Schools and Libraries Corporation ("SLC") to develop a reorganization plan designed to ensure both the efficient and the effective administration of the universal service programs.[3] The Plan submitted by USAC largely satisfies these goals. It proposes taking three disparate organizations and combining them into a single corporate structure, which will go a long way toward achieving the efficiency the Commission and Congress desire. In addition, USAC intends to minimize the costs and burden on consumers by eliminating duplicative functions of the three programs. The Plan also fulfills the Commission's expectation that "the specialized knowledge and expertise of SLC and RHCC would be maintained in the unified structure"[4] by creating three divisions, each of which will continue to serve directly its particular community of interest.

The Commission should not lose sight of the fact that Congress specified that the entity established to administer the universal service programs "is limited to implementation of the FCC rules for applications for discounts and processing the applications necessary to determine eligibility for discounts under section 254(h) of the Communications Act of 1934 (47 U.S.C. §

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[2] See Section 2005(b)(2) of Senate Bill 1768 (1998).

[3] Report in Response to Senate Bill 1768 and Conference Report on HR 3579, Report to Congress, FCC 98-95, at ¶¶ 1, 8-11 (rel. May 8, 1998).

[4] Id.

254(h)) as determined by the Commission."[5] Only the Commission may set policy regarding the non-administrative aspects of the fund. Given this limited role of USAC, Intermedia does not see the logic of establishing committees at the Board level to oversee the high cost, schools and libraries, and rural health care support mechanisms. Because USAC proposes to combine most of the functions of the three programs, the Board should operate as a unified entity. To the extent specific expertise or interfacing with a particular community is required, staff divisions have been proposed for just such purposes.

If the Commission nevertheless determines that Board committees are warranted, it should not permit those committees to bind the full Board under any circumstances. As Commissioner Furchtgott-Roth asks, "what kinds of decisions will any subcommittee be making that would be of such paramount interest to the program that it would be necessary to bind the full USAC board absent a supermajority?"[6] Intermedia agrees that there is no valid reason for permitting each committee to bind USAC financially or otherwise when USAC itself lacks the authority to make such decisions "without appropriate consultation and guidance from the Commission."[7]

For these reasons, RHCC's proposal that the RHCC Committee's decisions should not be subject to being overridden by the Board, even by supermajority vote, is especially ill conceived.[8] The promulgation of three budgets as contemplated by RHCC is, at a minimum,

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[5] Section 2005(b)(2)(A) of Senate Bill 1768 (emphasis added).

[6] See Statement of Commissioner Harold Furchtgott-Roth at 1. ("Furchtgott-Roth Statement").

[7] Section 2005(b)(2)(A) of Senate Bill 1768.

[8] See Separate Statement of the Rural Health Care Corporation and Request for Three Changes in the Plan ("RHCC Statement").

excessive, and would significantly hinder the Commission's and USAC's ability to constrain costs. When it first established USAC, the Commission made clear that the organization enjoys no independent budgetary authority. USAC is required to "project its administrative costs and submit those projected costs to the Commission for review for reasonableness."[9] The Commission set forth detailed instructions regarding how USAC's costs are to be allocated, and only upon approval by the Commission may USAC "use the projections of its costs to administer the high cost and low-income programs."[10] Because USAC requires pre-approval of the company's overall budget from the Commission, there is simply no justification for the annual development of three separate budgets and virtually no accountability by committees to USAC.

RHCC also has not presented a convincing case for adopting its other two proposed modifications to the Plan.[11] The Board already has seventeen members and, in Intermedia's view, adding two more would far exceed that which is necessary to ensure efficiency and effectiveness. While RHCC apparently fears that the voice of its rural health care constituents will get lost in the fray, any policy considerations that those constituents might have must be addressed to the Commission, not to representatives of the USAC Board. If any particularized expertise is required to process applications and otherwise fulfill the assigned duties of USAC, the RHCC division staff can easily provide it.

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[9] Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18426-27 ¶ 47 (1997).

[10] Id.

[11] RHCC Statement at 3.

Similarly, there does not appear to be a legitimate reason for restricting the power of USAC's CEO to hire and fire RHC division staff as he or she sees fit.[12] While, in most cases, it is likely that the CEO would delegate such decisions to the division head, the CEO should retain ultimate authority over all personnel matters. RHCC's proposal is tantamount to suggesting that, while the Chairman of the FCC can choose a Common Carrier Bureau chief, he may have no input into the decisions on the hiring of the deputy chief. Likewise, under RHCC's approach, the FCC Chairman could fire the bureau chief for failing to fulfill the Commission's mandate, but would be forced to retain the entire staff hand-picked by that chief. Obviously, such conditions would do little to serve the public interest.

Notwithstanding RHCC's apparent desire to retain corporate autonomy, it has set forth no good public policy justifications for its proposed modifications to USAC's Plan. Such changes would undermine efficiency and, other than its unsupported and conclusory statements, RHCC has not shown that the Plan prevents the combined entity in any way from fulfilling the distinct mission of providing universal service to rural health care providers. Indeed, subject to the suggestions made herein, Intermedia believes that the Plan appropriately balances the Commission's dual goals of promoting efficiency and effectiveness in the administration of all the universal service funds, including the rural health care fund. Accordingly, RHCC's proposals should be rejected.

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[12] RHCC proposes limiting the CEO's power to hire or fire personnel within the rural health care division with the exception of the head of the division. Id.

II. THE COMMISSION MUST ENSURE THAT USAC ADMINISTRATIVE PROCEDURES DO NOT DISADVANTAGE ANY CARRIER OR CLASS OF CARRIER

Because USAC is essentially an administrative arm of the Commission, it is critical that the Commission retain and exercise its enforcement authority with respect to carrier contributions to the universal service funds. In particular, the Commission must take prompt action if and when USAC informs it that a carrier is delinquent in making required payments to the funds. Only the Commission has the power to sanction the carriers under its jurisdiction and such matters cannot, and should not, be delegated to USAC.

Prompt enforcement of the Commission's rules is necessary if the fund is to operate in an efficient and impartial manner. If some carriers fail to pay, the remaining complying carriers will have to pay more. Moreover, if some carriers know today that they can fail to submit timely payments with impunity, the Commission may find that tomorrow more carriers are acting in a similar fashion. These circumstances would make it impossible for USAC to meet its budgetary projections and, therefore, to disburse the funds as required by the Commission and Congress. In the end, competition and consumers would suffer.

In response to the Commission's request for comment on ways in which to make the appeals process "as fair and efficient as possible," Intermedia proposes that the Commission adopt explicit regulations to protect carriers in the event of USAC mistakes.[13] For example, Intermedia can envision a situation in which a carrier provides service to a school at a discount based on a USAC finding that the school is qualified, only to discover later that USAC's decision was erroneous. While Commissioner Furchtgott-Roth correctly fears that taxpayers have no

[13] Public Notice at 6.

assurance that such payments would be returned.[14] Intermedia urges the Commission to ensure that carriers do not bear the brunt of such USAC errors. If service is provided pursuant to a USAC ruling, the providing carrier should not be required retroactively to relinquish rights to, or reimburse, funds because the ruling was found to be incorrect. Rather, like Commissioner Furchtgott-Roth, Intermedia believes that the adverse consequences to taxpayers of these types of problems could be significantly adverted if the Commission is involved early in the review process.[15]

In addition, the Commission should clarify that decisions made by USAC regarding its internal administrative functions are not appealable. If carriers were free to challenge, for example, a decision of the USAC CEO to fire a division head, it would significantly impair USAC's ability to function efficiently and fairly.

Finally, Intermedia supports the Commission's proposal to require USAC to prepare and file with Congress and the Commission an annual report detailing all significant aspects of its structure and operations for the preceding year.[16] This report should, among other things, contain information regarding administrative costs on a program-by-program basis, the amount of money collected and disbursed for each program, what carriers were the beneficiaries of such funds, and the number and identity of carriers that failed to submit timely payments or worksheets, including the dollar amount not submitted. In addition, USAC should be required to describe the

[14] Furchtgott-Roth Statement at 2.

[15] Because of these considerations, Intermedia opposes any requirement that would force parties adversely affect by USAC staff decisions to first appeal to a Board committee and then to the full USAC Board before filing with the Commission. Id.

[16] Id.

results of its program-specific audits, including an assessment of the overall success of each program in fulfilling its particular mandate.

III. COMPENSATION LIMITATIONS SHOULD APPLY TO ALL USAC OFFICERS AND EMPLOYEES

Intermedia fully supports the establishment of the same compensation limitations the Commission recently adopted for SLC and RHCC for all USAC officers and employees, including those responsible for administering the high cost and low income support mechanisms.[17] There is absolutely no reason the CEO of USAC should be compensated at a higher level than the Chairman of the FCC, who has ultimate decision-making power over USAC. This is especially the case considering that, unlike other non-profit organizations and charities, decisions on whether to contribute and the amount of the contribution to the universal service fund is not voluntary. While, for example, a government worker has access to information on the percentage of contributions allocated to overhead by each charity participating in the United Federal Campaign, and can decline to give based on such information, telecommunications providers have no such choice. Rather, the administrative costs of USAC are rolled into its demand projections for universal service support, and carriers are required to cover the full amount. Accordingly, the Commission must ensure that the salaries of USAC personnel are not so high as to create an unwarranted burden on contributors. Intermedia concurs that the salary limit for Level I of the Executive Schedule is reasonable for these purposes.[18]

Intermedia supports the Commission's proposal to appoint USAC as the permanent Administrator and the Plan's proposal to divest USAC from NECA as soon as possible. Both of

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[17] Public Notice at 3-4.

[18] Id.

these actions would add greater certainty to the administration of the fund and, therefore, would enable it to function more effectively and efficiently.

CONCLUSION

For the foregoing reasons, Intermedia urges the Commission to approve the plan of reorganization submitted by USAC, subject to the proposed changes set forth above. The Commission should reject the relief requested by RHCC because it would undermine the efficiency of the programs, without adding any corresponding effectiveness.

Respectfully submitted,

INTERMEDIA COMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE

I, Tanya Butler, certify that on this 5th day of August, 1998, a copy of the foregoing "Comments of Intermedia Communications, Inc." was served on the following parties by messenger:

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